In the
Supreme Court of the United States

OCTOBER TERM, 1947

No. 503

CHESTER BOWLES, Administrator, Office of Price Administration,

Petitioner,

vs.

WARNER HOLDING COMPANY, a Corporation,

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR WARNER HOLDING COMPANY, A CORPORATION, IN OPPOSITION

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Argument	3
Conclusion	6
Appendix	7

CASES CITED

Arnson v. Murphy, 109 U. S. 238	4
Barnet v. National Bank, 98 U. S. 555, 558	5
Bowles v. Skaggs, 151 Fed. (2d) 817	3
Bowles v. Slater, Eastern Dist. of Mich., Civil No. 4319, Feb. 28, 1945	6
Farmers' & Mechanics' National Bank v. Dearing, 91 U. S. 29, 35	5
Fair Labor Standards Act (52 Stat. 1069, 29 U. S. C. 217)	6
Globe Newspaper Co. v. Walker, 210 U. S. 356	5
Hassel v. United States, 3 Cir., 34 Fed. (2d) 34, 36	5
Hecht Company v. Bowles, 321 U. S. 321	3, 4, 5, 6
Judicial Code as amended by the Act of February 25, 1925, Section 240 (a)	1
Meredith v. City of Winterhaven, 320 U. S. 228	3
Senate Report 931, 77th Congress, Second Session, page 25, etc.	4
United States v. Babcock, 250 U. S. 328, 331	5
Walling v. O'Grady, 146 Fed. (2d) 422	6
Walling v. Miller, 133 Fed. (2d) 629, reversing Fleming v. Miller, 47 Fed. Supp. 1004	6
Wilder Manufacturing Co. v. Corn Products Refining Co., 236 U. S. 165, 174-175	4

ACTS AND RULES

Emergency Price Control Act:	
(56 Stat. 23, 33, 50 U. S. C. App. 901, et seq., as amended by the Stabilization Extension Act of 1944, 58 Stat. 649, 50 U. S. C. App. 901, et seq.	2
Section 205 (a)	2, 4, 5, 6, 7
Section 205 (e)	3, 4, 5, 7, 8

In the
Supreme Court of the United States

OCTOBER TERM, 1945

No. 793

CHESTER BOWLES, Administrator, Office of Price Administration, Petitioner,

vs.

WARNER HOLDING COMPANY, a Corporation.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR WARNER HOLDING COMPANY, A CORPORATION, IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 25-36) is reported in 60 Fed. Supp. 513. The opinion of the Circuit Court of Appeals for the Eighth Circuit (R. 66-71) is reported in 151 Fed. (2d) 529.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on October 31, 1945 (R. 71-72). The jurisdiction of this Court is invoked under Sec. 240 (a) of the Judicial Code as amended by the Act of February 25, 1925.

QUESTION PRESENTED

Whether or not the words "other order" contained in Sec. 205 (a) of the Emergency Price Control Act includes the power of the Court to order restitution to be made by a landlord to tenants of overcharges in injunction proceedings brought under that Section of the Act.

STATUTE INVOLVED

The statute involved is the Emergency Price Control Act of 1942 (56 Stat. 23, 33, 50 U. S. C. App. 901, *et seq.*, as amended by the Stabilization Extension Act of 1944, 58 Stat. 640, 50 U. S. C. App. 901, *et seq.*)

The pertinent provisions of the statute involved are set forth in the Appendix hereto attached at the end of this Brief.

This action was brought by the Office of Price Administration, through its Administrator, Chester Bowles, to enjoin Warner Holding Company, a corporation, from violations of the Emergency Price Control Act and to require Warner Holding Company to refund to tenants the excess of the rents which it had collected over the maximum under the Act (R. 2-6).

The District Court granted the injunction but refused to order restitution, upon the grounds that the words "or other order" did not betray an intent to include therein the power of the District Court to order restitution in connection with injunction proceedings (R. 35-41).

The judgment of the lower court was affirmed by the Circuit Court of Appeals for the Eighth Circuit, upon the grounds that the remedy afforded the Administration by Sec. 205 (a) to enforce compliance by procuring injunctive orders or their equivalents constituted an adequate civil remedy to effectuate the purposes of the Act. Upon the further grounds that at the time this legislation was enacted

it was not the intent of Congress to include the power to order restitution as an adjunct of injunctive relief under the provisions of Sec. 205 (a). Upon the further grounds that Sec. 205 (a) provided a specific and exclusive statutory remedy for enforcing compliance with the Act, as manifested by the intent of Congress in the enactment of Sec. 205 (e), whereby the right of the Administrator to secure reparations was enlarged (R. 70, 71).

The decisions of both the District Court and Circuit Court of Appeals were, therefore, not rested solely upon the ground that the Court was without power to order restitution, but upon these additional grounds as well.

ARGUMENT

1. The decision of the Court below is not in conflict with the decision in *Bowles v. Skaggs*, 151 Fed. (2d) 817, merely because the Court in that case said it was in conflict. It will be observed that in the Court's opinion in connection with the denial of re-hearing of the *Skaggs* case, December 10, 1945, as set forth in the Appendix of Petitioner's Brief, the Court made a distinction between the facts there involved and the case at bar. It was that "the violations there involved were such as could be repeated and an injunction to prevent repetition might well have been considered adequate to vindicate the mandate of the statute and the regulation." This principle falls squarely within the principle as illustrated by the words of the Supreme Court in *Hecht Company v. Bowles*, 321 U. S. 321, wherein the Court there referred to the case of *Meredith v. City of Winterhaven*, 320 U. S. 228, and said:

> "An appeal to the equity jurisdiction conferred on Federal District Courts is an appeal to the sound discretion which guides the determinations of courts of equity."

The meaning of the words "or other order" was carefully considered by the Supreme Court in *Hecht Company v. Bowles, supra,* wherein the Court said:

> "Such an order, moreover, would seem to be a type of 'other order' which a successful reading of Section 205 (a) would permit a court to issue in a compliance proceeding."

It must be remembered that this is a compliance proceeding and not an action brought under the provisions of Sec. 205 (e) which makes provision for restitution or other statutory penalty to be imposed upon the defendant.

2. The argument advanced by petitioner that Sec. 205 (a) was amply broad enough to authorize the Court to compel restitution at the suit of the Administrator without the enactment of Sec. 205 (e) is without merit. If petitioner's argument could be deemed to be correct, there would have been no need for the enactment of Sec. 205 (e). The legislative history of the enactment of the Act clearly indicates that Congress knew Sec. 205 (a) was not adequate to provide for the remedy desired and that Sec. 205 (e) was enacted to remedy that defect. (Senate Report 931, 77th Congress, Second Session, p. 25, etc.)

This fact is recognized by the Circuit Court of Appeals, and is a correct one.

At the time Congress included the words "or other order" in the Act, had it intended to mean that restitution can be made under Sec. 205 (a), it had only to say so and include words to that effect. The power of the Court to grant mandatory relief predicated upon the terminology expressed in the statute creating a right and providing a special remedy, must be predicated upon language specific and direct, and the remedy there provided must be exclusive. *Wilder Manufacturing Co. v. Corn Products Refining Co.*, 236 U. S. 165, 174-175; *Arnson v. Murphy*, 109 U. S. 238;

Barnet v. National Bank, 98 U. S. 555, 558; *Farmers' & Mechanics' National Bank v. Dearing*, 91 U. S. 29, 35; *United States v. Babcock*, 250 U. S. 328, 331. See also *Hassel v. United States*, 3 Cir., 34 Fed. (2d) 34, 36, and cases cited.

When Congress enacted the statute in question it must have had in mind not only the last above referred to rule of law, but also the rule that where the enumeration of the specific is followed by a general statement it limits the field of application of the general to the field covered by the specific. Congress must have had in mind that the powers granted to a court of equity should be those specifically enumerated, should be explicit and direct and not subject to more than one interpretation, and that the Court cannot enlarge upon the statutory scheme of enforcement. *Globe Newspaper Co. v. Walker*, 210 U. S. 356; *Hecht Co. v. Bowles*, *supra*; *Meredith v. City of Winterhaven*, *supra*.

3. The purposes of the Act can be and are amply effectuated by Sec. 205 (e), and, as the Supreme Court said in the *Hecht* case, *supra*:

> "The Administrator does not carry the sole burden of the war against inflation. The courts also have been entrusted with a share of the responsibility. And their discretion under Sec. 205 (a) must be exercised in the light of the legitimate objectives of the Act. For the standards of the public interest in the requirements of private litigation measure the propriety and need for injunctive relief in these cases."

The case at bar is one where the purpose of the action is to prevent future violations for the protection of the public interest as against the requirements of private litigation.

4. The question of requiring the restoration of *status quo* between the parties compels a recognition of the principle that the *status quo* cannot be restored unless all of the parties are before the Court. This question is jurisdictional

and affords the basis upon which *Walling v. O'Grady*, 146 Fed. (2d) 422, is easily distinguished from the case at bar. The same reasoning applies to other cases involving an interpretation of the Fair Labor Standards Act (52 Stat. 1069, 29 U. S. C. 217). The restoration of *status quo* can be ordered only as to parties to the action. Sec. 205 (e) of the Emergency Price Control Act. *Walling v. Miller*, 138 Fed. (2d) 629, reversing *Fleming v. Miller*, 47 Fed. Supp. 1004; *Bowles v. Slater*, Eastern Dist. of Mich., Civil No. 4319, Feb. 28, 1945; *Hecht Co. v. Bowles, supra.*

If the remedy given tenants and consumers by the Act under Sec. 205 (a) is inadequate to protect the public interest, then Congress should amend it, but the Court does not have the power to grant to itself a power not granted to it by Congress and not intended by Congress to be granted.

CONCLUSION

If the decision of the Court below is in conflict with the decisions of other Circuit Courts of Appeal, then those decisions are erroneous. The decision of the Circuit Court of Appeals in this case is a correct one, it is good law, and certiorari should therefore be denied.

Respectfully submitted,

R. H. FRYBERGER,
1126 Baker Building,
Minneapolis, Minnesota.
G. W. TOWNSEND,
On the Brief,
1126 Baker Building,
Minneapolis, Minnesota.

APPENDIX

Section 4 (a) provides:

> It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (2) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

Section 205 (a) provides:

> Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Section 205 (e) prior to amendment provides:

> If any person, selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court. * * * If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or prices and the buyer is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States.

Section 205 (e), as amended by the Stabilization Extension Act of 1944, Pub. Law No. 383, 50 U. S. C. App., Sec. 925 (e), provides:

> If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Ad-

ministrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.